

MAY 22 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. **77-1663**

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC., a
NON-PROFIT FLORIDA CORPORATION, *Petitioner*

v.

DAVID B. WALRATH, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

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*Attorney for Petitioner,
The Society for the Welfare
of Animals, Inc.*

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IN THE
Supreme Court of the United States

No. _____

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC., a
NON-PROFIT FLORIDA CORPORATION, *Petitioner*

v.

DAVID B. WALRATH, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

The Society for the Welfare of Animals, Inc., a non-profit Florida corporation, petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida, entered November 30, 1977.

DECISIONS BELOW

The opinion of the Florida Supreme Court and order on petition for rehearing are included in our appendix. The decision of the intermediate appellate court, the District Court of Appeal of Florida, Third District, is found at 343 So.2d 934 and in the appendix. The final decree from the trial court, the Circuit Court, Eleventh Judicial Circuit of Florida, for Dade County, Florida, is also included in the appendix.

JURISDICTION

Petition for rehearing was timely filed. It was denied by the Supreme Court on April 5, 1978. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This action involves Florida Statutes 474.031(13) (1975), which defines unprofessional or unethical conduct of a veterinarian to include objectionable advertising. Also involved is the First Amendment to the United States Constitution.

QUESTION PRESENTED

Whether the prohibition of a non-profit Florida corporation, which operates a veterinary clinic and employs a licensed veterinarian from advertising the availability and cost of its services by Florida Statutes 474.031(13) (1975) violates the First Amendment rights of that corporation?

STATEMENT OF THE CASE

Petitioner, is a non-profit corporation that at all times operated a clinic in Miami, Florida where pet dogs and cats were neutered or spayed. It employed a licensed veterinarian to perform those operations.

Respondent, is a licensed veterinarian who instituted this action by suit in the Dade County, Circuit Court to enjoin petitioner from advertising its services in the public media. After a non-jury trial, on June 18, 1976, the trial court entered its final decree restraining petitioner from advertising on television, radio, news papers and limiting its advertising only to that which

might be ethically done by a Florida licensed veterinarian.

The constitutional validity of Florida Statutes 474 which seek to prohibit advertising by veterinarians, was not raised in the trial court but was presented to the intermediate appellate court in Florida, The District Court of Appeals, Third District:

The Society appeals and urges error in that they are not a corporation subject to the provisions of Ch. 474 and, further, it was error for the trial court to prohibit the advertising as same constituted an infringement on its constitutional right of freedom of speech, citing *Stadnick v. Shell's City, Inc.*, 140 So.2d 871 (Fla. 1962); *Florida Board of Pharmacy v. Webb's City, Inc.*, 219 So.2d 681 (Fla. 1969); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, — U.S. — (1976). We disagree, and affirm.

Pursuant to § 474.031(11)(c), Florida Statutes (1975), the services performed by the doctors of veterinary medicine employed by the Society were, in fact, the practice of veterinary medicine by the spaying and neutering of animals. It is conceded that a licensed doctor of veterinary medicine could not so advertise and, therefore, a corporation [even though non-profit] which employs a licensed doctor of veterinary medicine should not be permitted to advertise veterinary medical services. We find a distinction in the prohibition against advertisements of professional services, as contrasted with the advertisement of the cost of prescription drugs, the sale of which is of products prepared by others in most instances. Therefore, we find the Florida cases and the Virginia case cited by the appellant to be distinguishable.

Petition for writ of certiorari was timely taken to the Supreme Court of Florida. The petition was de-

nied by the Supreme Court of Florida on November 30, 1977 with two justices in dissent.

Petition for rehearing was timely filed and it was also denied on April 5, 1978 with the same two justices again in dissent.

REASONS FOR GRANTING THE WRIT

We submit that the decision of the Supreme Court of Florida and The District Court of Appeal of Florida, Third District, violate the First Amendment rights of the petitioner. We urge that the First Amendment entitles Florida residents who own pets to receive information that the petitioner wishes to communicate to them through advertising as to the availability of its spaying and neutering services and that those services are low-cost. We urge that the United States Constitution must free the petitioner to so advertise its services.

This Court has held that commercial speech, which serves individual and societal interest in assuring informed and reliable decision making, is entitled to some First Amendment protection. *Virginia Pharmacy Board v. Virginia Consumer Council*, 96 S.Ct. 1817; *Bates v. State Bar of Arizona*, 97 S.Ct. 2691 (1977).

In *Virginia Pharmacy Board*, this Court declared that a pharmacist was entitled under the First Amendment to advertise prescriptioned drug price information against a statute declaring such advertising was "unprofessional conduct".

In *Bates v. State Bar of Arizona*, supra, this Court held that advertising routine legal services by an attorney also fell within the scope of First Amendment protection.

We urge that the First Amendment entitles the petitioner to advise the public of the availability of its low-cost veterinary services. The petitioner is not in business to enrich itself but operate its clinic as a public service.

CONCLUSION

We submit the issue raised herein is of such national significance as to warrant this Court's review of the erroneous decisions below. A writ of certiorari should, we urge, be issued to the Florida Supreme Court to review that decision.

Respectfully submitted,

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Suite 550
Miami, Florida 33130

*Attorney for Petitioner,
The Society for the Welfare
of Animals, Inc.*

APPENDIX

1a

APPENDIX

Order, Dade County Court

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE No. 75-13473

DIVISION No. 05

DAVID B. WALRATH, D.V.M., *Plaintiff,*

vs.

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
LOUIS HORVATH, D.V.M., and BING ALHERING, D.V.M.,
Defendants.

Final Decree

This cause came on regularly for trial before the court sitting without a jury on June 4, 1976, CHARLES A. HAYES appeared as counsel for the plaintiff, and DAVID J. WHITE appeared as counsel for the defendant, and the court having heard the testimony and having examined the proofs offered by the respective parties, and the court being fully advised in the premises and having directed that judgment be entered in accordance therewith; now, therefore, by reason of the law and findings aforesaid:

It is hereby ORDERED, ADJUDGED and DECREED that the defendant, his employees, servants, agents, and members be, and they are hereby, perpetually enjoined and restrained from all objectionable advertising, including but not limited to, advertising on television, radio, and newspapers in violation of F.S. 474 and Rules implemented thereunder as applied to the practice of Veterinary medicine. It is the purpose and intent of this Order to restrain and limit all advertising by the defendant to that which may ethically be done by a Veterinarian duly licensed to practice in the

State of Florida. The defendant is specifically restrained from the advertising of fees charged for services or the advertising of so called "low cost" fees for services.

ORDERED at Miami, Dade County, Florida on June 18, 1976.

JAMES W. KEHOE
Circuit Judge

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Opinion, District Court of Appeal of Florida, Third District

The SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
Appellant,

v.

DAVID B. WALRATH, *Appellee.*

No. 76-1372.

March 15, 1977.

Rehearing Denied April 13, 1977.

Action was brought to enjoin nonprofit corporation from advertising what was alleged to be services of veterinary medicine. The Circuit Court, Dade County, James W. Kehoe, J., granted injunction and defendant appealed. The District Court of Appeals held that spaying and neutering of animals by doctors of veterinary medicine employed by nonprofit corporation constituted practice of veterinary medicine and, since licensed doctors of veterinary medicine could not advertise such practice, the corporation would not be permitted to do so, and the prohibition against such advertising did not improperly infringe on corporation's constitutional right of freedom of speech.

Affirmed.

Constitutional Law
Physicians and Surgeons

Spaying and neutering of animals by doctors of veterinary medicine employed by nonprofit corporation constituted practice of veterinary medicine and, since licensed doctors of veterinary medicine could not advertise such practice, the corporation would not be permitted to do so;

prohibition against such advertising did not improperly infringe on corporation's constitutional right of freedom of speech. West's F.S.A. §§ 474.01 et seq., 474.031(11)(c).

Michael A. Lipsky, Miami Beach, Robert L. Shevin, Atty. Gen., and Carol L. Reilly, Asst. Atty. Gen., Tallahassee, for appellant.

Charles A. Hayes, Homestead, for appellee.

Before PEARSON and BARKDULL, JJ., and CHARLES CARROLL (Ret.), Associate Judge.

PER CURIAM.

The instant action was begun in the trial court to enjoin The Society for the Welfare of Animals, Inc., a non-profit corporation, from advertising what was alleged to be services of veterinary medicine. Upon final hearing, the trial judge entered an order which reads, in part, as follows:

.

"It is hereby ORDERED, ADJUDGED and DECREED that the defendant, his employees, servants, agents, and members be, and they are hereby, perpetually enjoined and restrained from all objectionable advertising, including but not limited to, advertising on television, radio, and newspapers in violation of F.S. 474 and Rules implemented thereunder as applied to the practice of Veterinary medicine. It is the purpose and intent of this Order to restrain and limit all advertising by the defendant to that which may ethically be done by a Veterinarian duly licensed to practice in the State of Florida. The defendant is specifically restrained from the advertising of fees charged for services or the advertising of so called 'low cost' fees for services."

.

The Society appeals and urges error in that they are not a corporation subject to the provisions of Ch. 474 and, further, it was error for the trial court to prohibit the advertis-

ing as same constituted an infringement on its constitutional right of freedom of speech, citing *Stadnik v. Shell's City, Inc.*, 140 So.2d 871 (Fla.1962); *Florida Board of Pharmacy v. Webb's City, Inc.*, 219 So.2d 681 (Fla.1969); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). We disagree, and affirm.

Pursuant to § 474.031(11)(c), Florida Statutes (1975), the services performed by the doctors of veterinary medicine employed by the Society were, in fact, the practice of veterinary medicine by the spaying and neutering of animals. It is conceded that a licensed doctor of veterinary medicine could not so advertise and, therefore, a corporation [even though non-profit] which employs a licensed doctor of veterinary medicine should not be permitted to advertise veterinary medical services. We find a distinction in the prohibition against advertisements of professional services, as contrasted with the advertisement of the cost of prescription drugs, the sale of which is of products prepared by others in most instances. Therefore, we find the Florida cases and the Virginia case cited by the appellant to be distinguishable.

Therefore, for the reasons above stated, the limited injunction imposed by the trial judge be and the same is hereby affirmed.

Affirmed.

Denial of Petition for Rehearing

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1977

WEDNESDAY, APRIL 13, 1977

CASE No. 76-1372

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
Appellant,

vs.

DAVID B. WALRATH, *Appellee.*

Counsel for appellant having filed in this cause petition for rehearing and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District

By ILLEGIBLE

Chief Deputy Clerk

cc: Michael A. Lipsky
Charles A. Hayes
Carol L. Reilly
/plc

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY
BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT
COURT IN AND FOR DADE COUNTY, FLORIDA)

Order Denying Petition for Writ of Certiorari

SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 30, 1977

CASE No. 51,570

DISTRICT COURT OF APPEAL, THIRD DISTRICT
76-1372

SOCIETY FOR THE WELFARE OF ANIMALS, INC., etc., *Petitioner,*

vs.

DAVID B. WALRATH, *Respondent.*

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ADKINS, ENGLAND, SUNDBERG and KARL, JJ.,
concur.

BOYD and HATCHETT, JJ., dissent.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: Tanya Carroll
Deputy Clerk

TC

cc: Hon. Louis J. Spallone, Clerk
Hon. James W. Kehoe, Judge
Hon. Richard P. Brinkler, Clerk
Michael A. Lipsky, Esquire
Charles Hayes, Esquire

Order Denying Petition for Rehearing

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, APRIL 5, 1978

CASE No. 51,570

District Court of Appeal, Third District

76-1372

SOCIETY FOR THE WELFARE OF ANIMALS, INC., etc., *Petitioner,*

v.

DAVID B. WALBATH, *Respondent.*

On consideration of the petition for rehearing filed by attorney for petitioner, and reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

OVERTON, C.J., ADKINS, ENGLAND, SUNDBERG and KARL, JJ.,
concur.

BOYD and HATCHETT, JJ., dissent.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: Dublin Causseaux
Deputy Clerk

TC

cc: Hon. Louis J. Spallone, Clerk
Hon. James W. Kehoe, Judge
Hon. Richard P. Brinkler, Clerk
Michael A. Lipsky, Esquire
Charles Hayes, Esquire

MOTION FILED
SEP 19 1978

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-1663

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
a NON-PROFIT FLORIDA CORPORATION,

Petitioner,

v.

DAVID B. WALRATH,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE IN SUPPORT OF PETITIONER
AND
BRIEF OF AMICUS CURIAE
THE HUMANE SOCIETY OF THE UNITED STATES

MURDAUGH STUART MADDEN
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Counsel for Amicus Curiae.

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OCTOBER TERM, 1977

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THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
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Petitioner,

v.

DAVID B. WALRATH,

Respondent.

MOTION OF THE HUMANE SOCIETY OF THE
UNITED STATES FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF PETITIONER

The Humane Society of the United States respectfully moves this Court for leave to file the accompanying brief in this case as amicus curiae in support of petitioner, the Society for the Welfare of Animals, Inc. The brief addresses the merits in addition to supporting the pending petition for certiorari.

CONSENT

While the consent of the petitioner herein has been obtained, the respondent, by his attorney, on August 21, 1978, formally refused to consent to the applicant's filing a brief as *amicus curiae*.

INTEREST OF APPLICANT

The Humane Society of the United States is a non-profit, charitable corporation with principal offices in Washington, D.C. and regional offices throughout the United States. It has active members in every state, including over 1,400 members in Florida, who share a commitment to the prevention of cruelty to animals and the promotion of all aspects of animal welfare.

The Humane Society of the United States has been a longstanding advocate of low-cost spay/neuter clinics as a critical component of the continuing struggle of the nation's municipalities to control their surplus cat and dog populations and the multiple burdens on public health, safety, environment and municipal finance created by such surplus populations, not to mention the frightful suffering experienced daily by millions of unwanted and abandoned pets.

The surplus cat and dog population has been a chief concern of the applicant since it was founded over twenty years ago. The applicant maintains a fully staffed animal control department, regularly advises local governments, and publishes information and educational materials on the problem. In the past four years, applicant, along with the American Veterinary Medical Association and three other organizations, has sponsored two national conferences on dog and cat control and the ecology of the surplus dog and cat problem. The applicant has also been

instrumental in having introduced into Congress several bills designed to provide federal loans for the construction of low-cost municipal spay/neuter clinics.

Accordingly, the Humane Society of the United States has a vital interest in seeking review of the lower courts' decisions, which, if left undisturbed, would result in diminishing the effectiveness of low-cost spay/neuter clinics, and in many instances, threaten their very survival.

FACTS OR LAW NOT ADEQUATELY PRESENTED BY THE PARTIES

The petition for certiorari herein capably argues the importance of this case under First Amendment doctrines regarding the advertising of professional services and the right of the public to receive the information conveyed by such advertising. What is missing from the petition is a discussion of the problems created by surplus cat and dog populations, the critical importance of spay/neuter clinics in controlling surplus dog and cat populations, and the historic opposition of the veterinary profession to spay/neuter clinics, an opposition which forms the backdrop to this case.

Based upon an examination of the petition herein and the briefs filed in the courts below, the applicant has concluded that these points will not be presented or argued by the parties.

Applicant submits that a presentation of the public policy ramifications of low-cost spay/neuter clinics would be useful and indeed central to a complete consideration of both the petition and the merits herein.

WHEREFORE, The Humane Society of the United States respectfully requests this Court to permit it to file the brief amicus curiae which is submitted herewith.

Respectfully submitted,

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The Humane Society of
the United States.*

September 19, 1978

IN THE
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No. 77-1663

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
a NON-PROFIT FLORIDA CORPORATION,

Petitioner,

v.

DAVID B. WALRATH,

Respondent.

BRIEF OF AMICUS CURIAE
THE HUMANE SOCIETY OF THE UNITED STATES

INTEREST OF AMICUS CURIAE

The Humane Society of the United States adopts and incorporates herein by reference the statement of interest set forth in the accompanying Motion for Leave to File Brief as Amicus Curiae.

QUESTIONS PRESENTED

The Petition herein calls upon this Court to decide whether, consistent with The First Amendment, a state can prohibit a non-profit corporation which operates a

low-cost spaying and neutering clinic as a public service, from advertising the availability and price of its services.

However, since the courts below which considered the merits held that petitioner, as a non-profit corporation offering a veterinary service to the public, was bound and restrained by what licensed veterinarians themselves could advertise,¹ the question implicitly contained in the question above, and which the Court is urged to decide, is whether, consistent with the First Amendment, a state can prohibit its licensed veterinarians from advertising price information about routine veterinary services.

STATEMENT OF THE CASE

Petitioner, The Society for the Welfare of Animals, Inc., is a Florida non-profit, charitable corporation located in Miami, Dade County, Florida. Petitioner owns and operates a veterinary clinic whose sole function is to make available spay and neutering operations to the public at a cost substantially below what private veterinarians charge. Petitioner contracts with one or two licensed veterinarians to perform the operations and to supervise all medical aspects of the clinic's operation. Petitioner does not in any way direct or interfere with the work of its contracting veterinarians. Tr. 68, 90.² Petitioner is responsible for the clinic building's mortgage, the salaries of the clinic's clerical and support staff, and other overhead. Tr. 81-82. Petitioner provides such services solely for the purpose of

¹"It is conceded that a licensed doctor of veterinary medicine could not so advertise and, therefore, a corporation [even though non-profit] which employs a licensed doctor of veterinary medicine should not be permitted to advertise veterinary medical services." Opinion, Florida District Court of Appeal. Pet. Appendix at 5a.

²References are to the trial transcript.

alleviating the surplus population of dogs and cats in Dade County. Tr. 66-70. Petitioner has no commercial motives in providing these services. Its officers and directors are unpaid and it depends heavily upon voluntary contributions and fund-raising events to supplement the proceeds of its clinic in order to meet its costs of operation. Tr. 66, 79-81.

At various times since it began operating, petitioner placed short advertising messages with local television and radio stations which donated air time. Tr. 21. Such messages quoted no specific prices but made reference to the availability and low-cost nature of petitioner's spaying and neutering services.³

Respondent David B. Walrath is a veterinarian in private practice in Dade County who instituted suit under Fla. Stat. Ann. § 474.011 *et seq.* (Cum. Supp. 1978) to enjoin the petitioner from continuing such advertising. Tr. 24. On June 18, 1976, the trial court entered a decree in plaintiff/respondent's favor. From unsuccessful appeals to the higher state courts, the Society for the Welfare of Animals is now petitioning this Court for a writ of certiorari to the Supreme Court of Florida.

SUMMARY OF ARGUMENT

The brief first demonstrates the public importance of effective spay/neuter clinics and relates the instant case

³The text of the message read as follows:

"This is Dorothy Stavig, with the Society For The Welfare of Animals. Your pet cat or dog is eligible, yes, eligible for low-cost neutering and spaying. Acquaint yourself with our service by calling 445-3606. All your questions will be answered to your satisfaction. The Society For The Welfare of Animal is conveniently located. The telephone number again, 445-3606." (Petitioner's Trial Exhibit I)

to the longstanding opposition of the veterinary profession to low-cost spay/neuter clinics.

Low-cost spay/neuter clinics have been established by humane societies and municipal governments as a remedy to the millions of stray and uncontrolled dogs and cats which plague municipalities across the country. Stray and uncontrolled dogs and cats are a significant menace to the public health, safety, and environment. Such animals spread disease, cause bite injuries, pollute and create nuisances, cause property damage and highway accidents, create breeding grounds for rodents, noxious insects, and disease, and impose a direct burden on municipal finance in animal control costs. Low-cost spay/neuter clinics are designed to be a more effective and humane alternative to the traditional remedial measures of mass impoundment and destruction of surplus animals.

Surgical sterilization of dogs and cats on a massive scale reduces indiscriminate breeding and the population chains of surplus animals resulting from such breedings. Municipalities with low-cost spay/neuter clinics have registered significant decreases in the numbers of animals impounded, animals destroyed, bite attacks and other citizen complaints relating to free-ranging dogs and cats. Spay/neuter clinics can also benefit municipal finance by reducing animal control costs.

The veterinary profession has largely opposed spay/neuter clinics because they compete effectively for spay/neutering business with the more traditional manners of practicing veterinary medicine. The organized profession has largely failed to provide an effective response to the surplus dog and cat population problem.

The amicus curiae then argues that the disposition of this case should be governed by *Bates v. State Bar of*

Arizona, 433 U.S. 350 (1977). Petitioner is providing one of the most routine and commonly used veterinary services at a reduced price and needs to be able to advertise price information in order to generate enough volume to meet its costs and, incidentally, to most effectively dispense a public service. The public benefits from such advertising by being made aware of the availability of low-cost spaying and neutering services.

In conclusion, the Court is urged to grant the petition for certiorari because of the national significance of the issues raised herein, and to apply the principles of *Bates v. State Bar of Arizona*, *supra*, to strike down restrictions on the advertising of price information regarding routine veterinary services.

ARGUMENT

I.

THE NECESSITY FOR CAT AND DOG POPULATION CONTROL

Spay/neuter clinics have been established by local governments and animal welfare organizations as a response to an increasingly acute surplus dog and cat population. The problem occurs nationwide but governments on the municipal level bear the brunt of controlling it.

Early puberty, short gestation periods, and large litter size make the dog and cat among the most prolific breeders of all mammalian species other than rodents.⁴ This tremendous reproductive capacity, combined with

⁴G. Hodge, "The Reign of Dogs and Cats: Contemporary Concepts of Animal Control," 8 *Management Information Service Report* No. 10 at 8 (International City Management Association, October, 1976).

irresponsible human stewardship, has resulted in a total nationwide dog and cat population estimated at 70-110 million, with an estimated birth rate of 2,000-3,500 animals per hour.⁵ A significant percentage of these millions of animals are either unattached to human owners (categorized as "unwanted") or do belong to human owners but are allowed to run at large (so-called "uncontrolled" dogs and cats), both categories comprising the "stray" or "free-ranging" dog and cat population. How significant this percentage is can be initially gauged by the fact that 13-15 million dogs and cats are destroyed in pounds and shelters annually in the United States, most of which are unwanted and stray animals.⁶

Such statistics are no less startling at the local level where more precise records are available. In greater Houston, Texas, for example, 100,000 dogs are euthanized annually.⁷ Baltimore, Maryland has a stray dog population density of 450 animals per square mile.⁸ St. Louis in 1973 destroyed over 24,000 dogs and 10,000 cats.⁹ In the instant case, Dr. Joel L. Nitzkin of the Dade County

⁵J. Hoyt, "A Case for Spay/Neuter Clinics," *Proceedings of the National Conference on the Ecology of the Surplus Dog and Cat Problem* 59, 61, (The Humane Society of the United States et al., 1974).

⁶Hodge, *supra* at 1.

⁷J. Steele, "Dog Parasite Contamination of the Environment in Houston," *Proceedings of the National Conference on Dog and Cat Control* 52, 53, (The Humane Society of the United States, et al., 1976).

⁸A. Beck, "Ecology of Unwanted and Uncontrolled Pets," *Proceedings of the National Conference on the Ecology of the Surplus Dog and Cat Population* 31, 33 (1974).

⁹*Id.* at 33.

Department of Health testified that Dade County in 1975 had an estimated cat and dog population of 240,000-250,000 animals of which 48,000-60,000 were strays. Tr. 54.

The enormous waste of life is self-evident. Moreover, the high numbers of surplus, stray or uncontrolled dogs and cats create a plethora of related public health, safety and ecological problems. Such animals carry a variety of diseases, cause bite injuries, pollute and create environmental nuisances, cause property damage and highway accidents, create symbiotic conditions conducive to the generation of rodents and noxious insects, and impose a direct burden on municipal finance in the form of animal control costs.¹⁰

These problems occur with significant intensity. The Dade County Health Department processes 7,000-10,000 dog bite reports annually. Tr. 50. Baltimore had 5,500 animal bites (mostly dogs) reported in 1975.¹¹ In St. Louis, one out of fifty children in the 5-9 year age group are bitten each year by uncontrolled dogs.¹² In 1973, the average cost of medical treatment per animal bite was at least \$50.00¹³ Damage to clothing and personal pro-

¹⁰See generally, Hodge, *supra*; D. Jones, "Public Health Hazards of Uncontrolled Pets," *Proceedings of the National Conference of Dog and Cat Control* 40 et seq (1976); and C. Djerassi, A. Israel and W. Jochle, "Planned Parenthood for Pets?" 29 *Bull. Atom. Sci.* 10 et seq. (Jan., 1973).

¹¹J. DeHoff, "Roaming Animals: The Health Commissioner's View" *Proceedings of the National Conference of Dog and Cat Control* 49 (1976). See also, D. Berzon, "Survey of Recent Dog Bite Experiences", *Report of Advisory Committee on Canines* (City of Baltimore, 1973).

¹²Beck, *supra* at 36.

¹³DeHoff, *supra* at 47.

perty ranged upward to \$100.00 per bite.¹⁴ Nationwide, approximately 30,000 persons annually have to undergo the painful series of anti-rabies vaccinations. The vast majority resulting from dog attacks.¹⁵ Dr. Richard Parker of the Center for Disease Control's Bureau of Epidemiology reports that animals bite are the fourth most common disease condition reported to the Center.¹⁶

While dog bites and fear of dog attacks are probably the most quantifiable of the public health consequences of a large stray animal population, certainly the most universally noticed consequence is the proliferation of ill-placed animal waste. Virtually every citizen in an urban area has had direct experience with dog feces damaging lawns and shrubbery, soiling shoes, and making a stroll through a park an experience akin to passing through a mined field. The statistics on canine littering in New York City are legendary,¹⁷ and other cities can cite equally alarming figures.¹⁸

More serious but less obvious consequences of promiscuous defecation by canines have only recently come to public attention. Dog feces frequently harbor a variety of

¹⁴*Id.* at 47.

¹⁵Hodge, *supra* at 1.

¹⁶Workshop on the Pet Population in New York State, *Report* at 7 (New York State Veterinary Medical Society *et al.*, 1975).

¹⁷Prior to the recently enacted ordinance requiring owners to clean up after their dogs, which, of course, will have no effect on the stray population, an estimated 150,000 pounds of feces and 90,000 gallons of urine were deposited on the public spaces of New York City each day. Jones, *supra* at 44.

¹⁸For Houston, see Steele, *supra* at 54; for Baltimore, see A. Beck, *The Ecology of Stray Dogs: A Study of Free-Ranging Urban Animals* 54 (1973).

parasitic eggs and larvae, such as hookworms and roundworms, which are transmittable to human beings. Dr. Nitzkin at trial listed visceral larva migrans, cutaneous larva migrans, toxoplasmosis, leptospirosis, and salmonellosis as the most frequently occurring human diseases in Dade County known to be associated with dogs and cats, most of which diseases are caused by direct or indirect contact with animal waste. Tr. 52. He characterized these diseases as "very common" health problems in Dade County. Tr. 51.

While there are at least fifty canine diseases transmissible to human beings,¹⁹ diseases of the parasitic larvae class are currently the object of the most serious concern.²⁰ Children are the usual victims because their play-habits frequently expose them to fecal-contaminated dirt or dust.²¹ Rabies, while largely under control throughout the United States remains a concern as the numbers of unvaccinated stray animals and their progeny and the incidence of animal bite cases continue to increase.

Symbiotic interactions between the stray animal population and sundry urban vermin pose a further health problem. Free-ranging dogs are the urban rat's best friend. The feeding habits of stray dogs commonly involve knocking over or breaking into trash containers and rummaging through garbage, thereby making food more available to

¹⁹See, Citizens Ad Hoc Task Force on Dogs, Alexandria, Virginia, *Report and Recommendations on Dog Control*, Appendix E (1976).

²⁰See J. Steele, "Dog Parasite Contamination of the Environment in Houston," *Proceedings of the National Conference of Dog and Cat Control* 52 *et seq.* (1976).

²¹See Beck, *The Ecology of Stray Dogs* at 62 and Steele, *supra* at 77-79.

rats. Such disruptive habits also obstruct trash collection, which aggravates the problem. Furthermore, dog and cat excrement is itself a rich source of food for both rats and scavenger insects such as roaches, in addition to being a breeding ground for flies.²² In the Stony Run-Hamden area of Baltimore, an accumulation of feces in a park due to surface water run-off was single-handedly responsible for a major rat infestation of the area.²³ Dr. Alan Beck concluded that "[d]ogs and rats obviously enjoy an urban style symbiotic relationship."²⁴

As an irritant to urban living, the problems caused by a surplus, free-ranging cat and dog population have no peer. A survey of the nation's mayors conducted in 1974 by the National League of Cities revealed that complaints about dog and other pet control problems were the leading category of citizen complaints received at city hall, ranking far above crime, housing, tax rates, and ten other major urban problems.²⁵

Translated into dollars and cents, the social costs of a surplus, free-ranging cat and dog population are enormous. Estimates of the total nationwide annual costs (private and governmental) of impounding and destroying surplus animals range from \$125 million to a half-billion dollars.²⁶

²² Beck, *The Ecology of Stray Dogs* at 51-53, 56.

²³ *Id.* at 51-52.

²⁴ *Id.* at 53. See also, Steele, *supra* at 84-85.

²⁵ National League of Cities, *America's Mayor and Councilmen: Their Problems and Frustrations* at 8 (NLC Research Report, 1974).

²⁶ "Conclusions and Recommendations," *Proceedings of the National Conference on the Ecology of the Surplus Dog and Cat Population* at 111.

On a local level, the burden of animal control costs is particularly acute. Chicago alone spends \$1.25 million per year for animal control.²⁷ The nationwide average control cost per animal handled was \$7.00 in 1973, but had risen to \$12.00 in 1976, with local variations as high as \$20.00 per animal.²⁸

A conservative estimate of the cost of medical care for bite victims in the United States stood at \$12.5 million in 1977.²⁹ When costs incurred for rabies control, sanitation and public health care related to dog- and cat-borne diseases are factored in, the total reaches at least \$50 million.³⁰ In addition, cattle, poultry, and swine losses from feral dogs in rural areas amount to at least \$5 million annually.³¹ Losses of wildlife are considered substantial but presently are unquantifiable.

²⁷ D. Bromwell, "Animal Control", *Proceedings of the National Conference on the Ecology of the Surplus Dog and Cat Population* 94, 97 (1974).

²⁸ T. Sorich, "Reduced Cost for Surgical-Neutering Programs," *Proceedings of the National Conference on Dog and Cat Control* 204, 214 (1976).

²⁹ R. Hummer, "Animal Control Statistics Every City Official and Taxpayer Should Know", *Proceedings of the Fourth Annual Animal Control Personnel Development Program* 11, 16 (S. Biles and D. Moore, eds., Center for Urban Programs, Texas A.&M. University, 1977).

³⁰ Djerassi, Israel, and Jochle, *supra* at 11.

³¹ *Id.* See also, Beck, "Ecology of Unwanted and Uncontrolled Pets", *supra* at 35 and Jones, *supra* at 45.

II.

THE EFFICACY OF SPAY/NEUTER CLINICS IN ANIMAL
POPULATION CONTROL

Low-cost spay/neuter clinics can reduce both the numbers of stray, free-ranging animals in an area and the need for animal control. In municipalities where low-cost spay/neuter clinics have been established and adequate records have been maintained, the number of animals impounded and destroyed (the so-called animal control workload indicators, which are indicative of the size of the surplus, free-ranging population) has declined.

Los Angeles, which has the most advanced municipally-run program of spay/neuter clinics in the country, experienced an 18.9% decline in the number of impounded animals between 1971, when the program was started, and 1975. The number of animals destroyed in the city's pounds likewise declined, by 21.7% over the same period.³²

Prior to the establishment of the Los Angeles clinics in 1971, both the numbers of animals impounded and animals destroyed had risen steadily and annually. Since 1971, both indicators have registered yearly decreases ranging from 3-9%.³³ (Apropos of this, it is noteworthy that the statewide totals for both indicators, which largely reflect the animal population/control data from Cali-

³²City of Los Angeles, Department of Animal Regulation Press Release (November 21, 1975). Animals impounded in 1971 numbered 144,530; in 1975, 117,280. Animals destroyed in 1971 numbered 110,835, compared to 86,799 in 1975.

³³City of Los Angeles, Department of Animal Regulation, *Status Report: Spay and Neuter Clinic Program* at 5 (April, 1974).

fornia municipalities without spay/neuter clinics, registered substantial increases from 1971 to 1974.)³⁴

Parallel and equally substantial results have been reported by Boston, Massachusetts, the City of Palo Alto, and the counties of Santa Clara and San Mateo (California) and by Vancouver, British Columbia.³⁵ In addition, apart from improvements in the standard animal control indicators, San Mateo County reported that animal complaint and bite reports declined by 13% during the first two years of its clinic's operation (1973-1974).³⁶

Furthermore, cost-benefit studies on spay/neuter clinics have found that every dollar spent on investment in low-cost spay/neuter clinics returns at least \$6.00-9.00 in reduced animal control costs over a ten-year period simply because the municipality is spared the expense of impounding and destroying several generations of probable offspring.³⁷

Spay/neuter clinics are not a panacea for the problem of the surplus animal population. Most authorities agree

³⁴Statewide, stray dogs impounded rose from 703,002 (1971) to 808,038 (1974); stray dogs destroyed increased from 408,107 (1971) to 550,043 (1974). Sorich, *supra* at 217.

³⁵See, Sorich, *supra* 216, and Vancouver Regional Branch, British Columbia Society for the Prevention of Cruelty to Animals, *Second Animal Clinic Report* (1977). In the B.C.S.P.C.A. program, the two municipalities in the Vancouver region which did not participate in spay/neuter program continued to show increases in animals destroyed, animal complaints, and biting attacks. *Id.*

³⁶Sorich, *supra* at 216.

³⁷*Id.* 211-214. See also, T. Sorich, "Report on Financial Justification for Establishment of Low-Cost, Public Spay and Neuter Clinics," 119 *Cong. Rec.* 5612-5614 (Daily ed., February 27, 1973).

that spay/neuter clinics must be employed in conjunction with other measures—most importantly an effective leashing law and a schedule of graduated license fees which favors the owners of neutered pets—in order to combat the whole range of dog and cat-related public health, safety, and ecological problems. However, there is little question that low-cost spay/neuter clinical programs are effective in reducing indiscriminate breeding, thereby preventing the initiation of population chains consisting in large part of free-ranging animals and, therefore, in suppressing both the overall numbers of dogs and cats in an area and, most importantly, the numbers of free-ranging animals. *See* Tr. 54.

III.

OPPOSITION OF THE VETERINARY PROFESSION TO SPAY/NEUTER CLINICS

The respondent herein, David B. Walrath, is a veterinarian in private practice in Dade County who brought this suit solely in objection to petitioner's advertising of the availability and low-cost nature of its services. Throughout this case, neither the quality of petitioner's spay/neuter services nor the public benefits afforded by spay/neuter clinics has been at issue.³⁸ Tr. 12, 102-103.

Rather it is apparent that the crux of Dr. Walrath's objections to petitioner's clinic is that it was effectively competing for spaying and neutering operations. Both Dr. Walrath and Dr. Householder, another private veterinarian

³⁸ Nonetheless, petitioner was allowed to introduce uncontroverted evidence that the quality of veterinary services provided by petitioner's clinic is at least equal to that offered by private practitioners (Tr. 90-93; *see also*, Tr. 100-101) and that there are severe problems in Dade County resulting from a surplus cat and dog population which spay/neuter clinics are beneficial in remedying. Tr. 50-56, 59-61.

practicing in Dade County, testified that they had experienced a marked decrease (allegedly of 75-85%) in the number of spaying and neutering operations they were performing since petitioner's clinic opened (although each man's gross income increased substantially during the same period; Dr. Walrath's income more than doubled). Tr. 8, 9-10, 25, 26-27. It is also apparent that throughout this case, the respondent has relied simply and totally, without regard to any consideration of public policy or welfare or to the context of the surplus animal problem, on the proscription against veterinarians advertising ordained in Fla. Stat. Ann. §§474.011 *et seq.* and the regulations promulgated thereunder by the Florida State Board of Veterinary Medicine. Tr. 103.

Dr. Walrath's suit is unfortunately all too characteristic of the response of the veterinary profession to the concept and establishment of spay/neuter clinics. Veterinarians tend to look upon municipally financed and run clinics as welfare programs and upon charitably financed and run clinics as unethical competition,³⁹ an attitude which ignores the fact that such clinics are established only in response to an acute community need for animal population control which has not been adequately met by other more traditional remedies such as mass impoundment and destruction and surgical neutering by veterinarians in private practice. The purpose of such clinics is neither commercial nor altruistic but is rather to fulfill a public policy goal of maximizing the effectiveness of surgical sterilization in reducing surplus dog and cat population.⁴⁰

³⁹ Sorich, "Reduced Cost for Surgical-Neutering Programs," *supra*. *See also*, W. Blackwell, "The Politics of Dog Control," Address Before the Association of Mayors, Councilmen, and Commissioners at the Texas Municipal League Conference, Houston, Texas, October 26-28, 1975.

⁴⁰ Low-cost spay/neuter clinics are not necessarily aimed at indigent pet-owners. A study of pet ownership in Alameda and Con-

[footnote continued]

The organized veterinary profession has on occasion responded with lower-cost spay/neuter programs of its own but typically only when the establishment of municipal or charitable clinics appeared imminent.⁴¹ Such programs run by the profession have not been nearly as successful in terms of the number of animals sterilized as the municipally or charitably operated clinics. The profession attributes that to insufficient public response—to surgical sterilization not being a popular means of animal population control.⁴² The more correct answer is that spay/neuter programs run by the profession are too often designed with the protection of the profession in mind rather than the fulfillment of the policy goal of reducing surplus animals. Such programs typically require appli-

tra Costa counties, California, showed that fewer dogs were owned by persons living in low-income areas and that those owned were not reproducing in excess of the overall ownership of dogs. Sorich "Reduced Cost for Surgical-Neutering Program", *supra*, at 208. Theodore Sorich concluded: "All factors considered, it is probably more important to attract a middle-income pet owner who *won't* pay prevailing private fees (because of low budgetary priorities for animal care) than to attract an indigent pet owner." *Id.* (Emphasis original).

Furthermore, it has been demonstrated that demand for spaying services is "extremely sensitive to fee levels," demand decreasing markedly as fees increase. Sorich, *Id.* at 207. The B.C.S.P.C.A. found in a survey that 83% of the persons having their pets neutered at the B.C.S.P.C.A. clinic were doing so because the clinic made the operation affordable. Vancouver Regional Branch, B.C.S.P.C.A., *supra*.

⁴¹Sorich, "Reduced Cost for Surgical-Neutering Programs," *supra* at 206.

⁴²H. Mahan, "Veterinary Association Surgical-Neutering Programs," *Proceedings of the National Conference of Dog and Cat Control* 199, 200, 202.

cants to show financial need for low-cost services,⁴³ employ a complex sliding fee schedule wherein the fee charged is a function of the weight or sex of the animal, and lack aggressive advertising campaigns to stimulate public interest.⁴⁴ The effectiveness of municipal and non-profit clinics suggests that spay/neuter programs are successful when operated by people who want to make them successful.

IV.

THE CONSTITUTIONAL ARGUMENT

In *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), this Court held that advertising concerning the availability and cost of routine legal services was entitled to protection under the First Amendment and could not be restrained by the states through the vehicle of enforcing codes of professional ethics. In so holding, this Court implicitly extended its hand to a new manner of law practices, a new delivery system for the more routine legal services which utilizes techniques of mass processing in order to keep case costs low and, most importantly, utilizes media advertising to generate the high volume of clients necessary to achieve profitability.

The instant case falls squarely within the rule of *Bates v. State Bar of Arizona*. As the Florida District Court of Appeal recognized, the petitioner, and its contracting

⁴³One of the programs established in Florida has a poverty-level threshold of \$1,500 per family member, which rendered a family of four with an income of \$6,001 ineligible for a low-cost spay operation. Florida Veterinary Medical Association, Worksheet on Mechanics of Surgical Sterilization Program, Form 1 (c. 1976).

⁴⁴Sorich, "Reduced Cost for Surgical-Neutering Programs," *supra* at 206-209. See also, "Spay Clinics: The Other Side of the Story," 54 *Modern Veterinary Practice* 29 *et seq.* (April, 1973).

veterinarians, regardless of its non-profit motives and purposes, are essentially engaged in the practice of veterinary medicine, however untraditional in its organization and manner of delivery. Pet. Appendix at 5a. Like the legal clinic in *Bates*, petitioner and its contracting veterinarians specialize in providing one of the most common and routine of veterinary services—spay and neutering operations.⁴⁵

As in *Bates*, the petitioner's clinic needs the high volume demand generated by price advertising in order to make the clinic financially feasible. Tr. 69. (Additionally, petitioner is seeking by such advertising to effect the optimal dispensation of a public service.)

⁴⁵Spay operations (ovariohysterectomies) performed on female dogs and cats, and castrations (orchiectomies) performed on male dogs and cats are, along with rabies and other kinds of vaccinations, the most routine of veterinary services. Spaying, while technically classified as major surgery because penetration of the abdominal cavity is involved, it is the most common operation performed on female dogs and cats. E. Catcott (ed.), *Animal Hospital Technology* 201 (1971); E. Catcott (ed.), *Feline Medicine and Surgery* 567 (2d ed., 1975). The entire operation can be performed in thirty minutes. R. Caras (ed.) *Dog Owner's Bible* 28 (1978). Complications are extremely rare. A minimal amount of post-operative care is required, *Id.*

The simplicity and predictability of these operations is further evidenced by the fact that clinics with one veterinarian can comfortably perform 2,800 spay operations per year. Serich, "Reduced Cost for Surgical-Neutering Programs" *supra* at 210.

Castrations are classified as minor surgery, take about fifteen minutes to perform, and require only slight post-operative care. Caras, *supra* at 28.

The standardized nature of spay/neuter operations is further evidenced by the fact that veterinarians typically have standard fee schedules for such operations with variations in price based upon the predictable factors of weight, sex, and species.

The final parallel with *Bates* is that in both cases the public benefits by obtaining a professional service at a reduced cost, a product identical in result and in every other substantive aspect to what private veterinarians offer, but a product whose delivery to the public is bereft of some of the baggage of professional self-protectionism.

A spay operation is a spay operation whether it is performed by the respondent, Dr. Walrath, in his private veterinary hospital, or by petitioner's equally licensed, equally qualified veterinarians working in equivalent facilities, and employing the same procedures and skills. The amicus curiae submits that under the First Amendment, as construed by *Bates v. State Bar of Arizona*, the public has a right to as much access to and information about petitioner's services as the petitioner can afford, and that the petitioner has a coordinate right to provide such access and information by means of advertising, specifically price advertising.⁴⁶

CONCLUSION

We ask this Court to grant the petition for certiorari in view of the national significance of the issues presented, as demonstrated in the arguments above, and the direct conflict between the decisions of the courts below and *Bates v. State Bar of Arizona, supra*.

We ask this Court to apply the rule of *Bates v. State Bar of Arizona* and strike down the restrictions on price advertising of routine veterinary services, including peti-

⁴⁶Petitioner as a corporation is afforded the protection of the First Amendment; See, *First National Bank of Boston v. Bellotti*, ___ U.S. ___, 98 S.Ct. 1407 (1978).

tioner's spay/neuter operations, contained in Fla. Stat. Ann. § § 474.011, *et seq.*⁴⁷

Finally, we urge this Court to continue the trend heralded by *Bates v. State Bar of Arizona*, *supra*, and its predecessors, *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), and *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), of constitutionally testing old assumptions and practices governing the relationship of the learned professions to the public to see whether those assumptions and practices serve the public or the professions. As former Chairman Lewis Engman of the Federal Trade Commission, referring to professional licensing practices, has stated:

There are . . . dozens of . . . State regulations, prohibitions, proscriptions and requirements . . . which subvert competition in the name of a greater objective—though sometimes it is hard to see exactly what that greater objective is or on whose judgment its greatness rests.⁴⁸

⁴⁷While most low-cost spay/neuter clinics are owned and operated by local governments or humane societies, it is important to realize that there are a handful of low-cost clinics throughout the country set up as private businesses by veterinarians themselves. The amicus curiae believes that there would be more of such clinics if their veterinarian-owners were allowed to advertise price information. It is urged, therefore, that any decision on the merits by this Court not be limited in scope to price advertising by municipal and charitable clinics alone but should include all routine veterinary services by whomever provided.

⁴⁸Florida House of Representatives, Committee on Regulated Industries and Licensing, *Examining the Examiners: An Investigation of the Licensure Examination Practices and Policies for Florida's Boards of Dentistry, Medical Examiners, Podiatry Examiners, and Veterinary Medicine with Recommendations for State and Federal Action* 8 (1975) quoting *U.S. News and World Report* (November 4, 1974) at 81.

The amicus curiae calls upon this Court to weigh whatever "greatness" the objective behind the advertising prohibitions of Fla. Stat. Ann. § § 474.011 *et seq.* may possess against the public interest in having optimal access to price information about the most commonly used veterinary services and in having effective spay/neuter clinics.

Respectfully submitted,

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